

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

AVITUS, INC.,

Plaintiff/Counter-Defendant,

vs.

NEA DELIVERY, LLC and
NICHOLAS BULCAO, individually,

Defendants/Counter-Claimants,

AVITUS, INC.,

Third-Party Plaintiff,

vs.

AMERICAN ZURICH INSURANCE
COMPANY,

Third-Party Defendant.

CV 17-69-BLG-TJC

ORDER

Before the Court is plaintiff/counter-defendant Avitus, Inc.’s (“Avitus”) Motion to Deem Facts Admitted, for Sanctions, for Dismissal of Counterclaims, and for Entry of Default Judgment or for Summary Judgment (the “Motion”).

(Doc. 47.) To date, neither defendant/counter-claimant NEA Delivery, LLC (“NEA”) nor defendant/counter-claimant Nicholas Bulcao (collectively, “Defendants”) has filed a response to Avitus’s Motion.

D. Mont. L.R. 7.1(d)(1)(B) governs the briefing schedule for motions filed in this Court and provides in pertinent part that Defendants’ responses to Avitus’s Motion were due no later than twenty-one (21) days after the date the Motion was filed. The deadline has now passed. “[F]ailure to file a response brief may be deemed an admission that the motion is well-taken.” L.R. 7.1(d)(1)(B)(ii).

Additionally, upon Defendants’ previous counsel’s Amended Motion to Withdraw as Counsel of Record (Doc. 39), to which Defendants also did not respond (*see* Doc. 40), the Court granted Defendants’ counsel’s withdrawal. (Doc. 41.) No attorney has since filed a notice of appearance on behalf of either Defendant.

Accordingly, the Court ORDERS as follows:

(1) on or before **March 16 2018**, NEA shall either (a) retain new counsel and such counsel shall enter a notice of appearance on its behalf, or (b) show cause, if any, why it is unable to retain counsel;

(2) on or before **March 16, 2018**, Bulcao shall either (a) retain new counsel and such counsel shall enter a notice of appearance on his behalf, (b) show

cause, if any, why he is unable to retain counsel, or (c) file a notice with the Court of his intent to proceed *pro se*; and

(3) on or before **March 16, 2018**, Defendants shall show cause, if any, why the Court should not deem Avitus's Motion to be well-taken in accordance with L.R. 7.1(d)(1)(B)(ii).

Defendants are advised that, should they fail to comply with this Order, the Court may dismiss their counterclaims with prejudice and enter judgment in favor of Avitus. *See* Fed. R. Civ. P. 41(b), 55; *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-131 (9th Cir. 1987).

DATED this 2nd day of March, 2018.



TIMOTHY J. CAVAN
United States Magistrate Judge